



MANAGEMENT MOXIE Nimble News

TIME TO ARREST THE STATUS QUO PERSONNEL DECISIONS – CRIMINAL RECORDS

Last Friday, the Governor signed into law a significant overhaul of the Commonwealth's Criminal Offender Record Information (CORI) system. This legislative makeover of the CORI system will require **all employers**, large or small, public or private, profit or not-for-profit, to revisit and most likely amend their current application forms and recruitment practices.

Employers Can Still Consider Criminal Records

Under the new CORI law, crime queries must be eliminated from application forms but are still allowed within the recruitment process. Employers may inquire about criminal records **after** the initial applicant screening process, during a verbal interview. The new CORI law also allows all employers to view an applicant's CORI records if knowing that information is "relevant to the nature of the employment." Under the new law, felony convictions will be available to prospective employers for ten years and misdemeanor convictions for five years, as long as there are no subsequent offenses. Murder and sex-offense convictions remain in the system permanently and cannot be sealed.

Do Criminal Records Create Any Pitfalls for Employers?

Yes. Employers have become increasingly aware of the importance of knowing if an applicant has a criminal record. Employers have a legal duty to make reasonable inquiries about whom they hire, and to provide a safe workplace. An employer who hires a person with a criminal record can be found liable for negligent hiring decisions under certain circumstances. Checking criminal records demonstrates due diligence. The Equal Employment Opportunities Commission (EEOC) has provided guidance for an employer's consideration of conviction records in employment decisions. The legal test applicable to the use of conviction records in employment decisions consists of the following factors: The nature and gravity of the offense; the time that has passed since the conviction occurred; and the nature of the job held or sought.

Arrests, as opposed to actual convictions, are a thorny area. The EEOC has indicated in cases of arrests the employer must consider not only the relationship of the

charges to the position sought, but the likelihood that the applicant actually committed the alleged conduct. Moreover, because members of some minority groups are arrested more often than the general populous, many courts have found that making personnel decisions on the basis of arrest records has a disproportionate impact on the employment opportunities of members of these groups. Because creating a disparate impact on a protected class of individuals is to be avoided, arrest inquiries are generally not a wise employment practice.

Final Thought

If your current application form contains crime queries, it must be changed immediately. It continues to be appropriate to inquire about criminal records during verbal interviews; however, we recommend that you proceed with caution. Employers should be careful to avoid automatically denying employment based on a criminal conviction. Instead, the nature and gravity of the offense must be considered, whether the offense is job-related, and when the offense occurred. Schools, hospitals and other employers have additional duties and obligations that may be a topic for a different day.

Please let us know how we can help.

You can reach us at (508) 548-4888, www.foleylawpractice.com or contact Mike Foley at mike@foleylawpractice.com to request our assistance.